

June 12, 1985

MEMORANDUM

TO: Philip Morris -- Product Liability Staff
FROM: Janet L. Johnson
RE: Seminar on Epidemiology and the Law:
Informal Observations

On June 3 and 4, I attended a seminar on Epidemiology and the Law at Loew's L'Enfant Plaza sponsored by the Society of Law and Medicine. Lectures were presented by five toxicologists/epidemiologists from John Hopkins University and two attorneys in private practice (Bert Black and Paul Rheingold). The lectures were designed to assist lawyers in understanding the technical medical/scientific evidence involved in product liability litigation and perhaps to introduce lawyers to potential expert witnesses.

No registration list was available. The seminar was attended by approximately 100 individuals, 90% of whom were plaintiffs' attorneys. The remaining individuals were from consulting firms (e.g., Arthur D. Little) and the government (OSHA, OTA); there were only a few defense lawyers (Dalkon Shield, and American Tobacco Company). When asked, I indicated that I specialized in FDA matters.

The presentations were largely scientific/technical (study design, bias and error, sample size, power analysis, etc.) This memo identifies points of general interest to the PM team.

I. Cigarette/Cancer Litigation

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Note →
This is really
trying - Jim

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- B. Forster Case -- An attorney from Minnesota representing the plaintiff in the Forster case stated that the only reason his firm agreed to take the case is that the plaintiff smoked a single brand (Camel) -- they were not interested in contending with multiple defendants. This attorney also noted that a video-taped deposition had recently been completed and that the defense attorneys (for some reason) had focused a great deal of attention on the foods consumed by the plaintiff and whether the plaintiff was aware of the health risks associated with those foods. The attorney indicated that his firm had not yet focused on much of the scientific/medical evidence.
- C. Shook, Hardy -- I spoke with a plaintiff's attorney from Kansas City about medical devices and a product liability action he was working on involving a cardiac defibrillator. He noted that his firm was not involved in any tobacco litigation, but that Shook, Hardy in Kansas City was very much involved in such litigation and that his firm had recently hired an attorney from Shook, Hardy. (My impression was that the Shook, Hardy attorney left to avoid involvement in tobacco litigation.)
- D. Tobacco/Cancer Link: Teaching Example for Students of Epidemiology -- During lunch I spoke with Leon Gordis, Chairman of the Department of Epidemiology at Hopkins. Gordis stated that he uses the tobacco/cancer link as a teaching example because the evidence is so "strong." Gordis has done consulting work (most recently -- Bendectin) and says he keeps an "open mind" -- there are always surprises. Gordis noted, for example, the dioxin experience -- dioxin is one of the most toxic substances known to man -- parts per trillion cause gross deformities in experimental animals -- Hopkins is monitoring the fallout from an explosion releasing two pounds of dioxin into the atmosphere in northern Italy -- the epidemiological data does not show a statistically significant increase in cancer in a 500 mile radius of the explosion.

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- E. Smoking/Lung Cancer in Animals -- Robert Rubin, Professor of Toxicology at Hopkins noted, in informal conversations, that for many years researchers were unable (for a variety of reasons) to produce lung cancer in animals; given the strong link between smoking and cancer this was considered "an embarrassment." Rubin noted that in the last 5-7 years, however, researchers have been able to produce lung cancer in animals.

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II. Cigarette/Fire Death and Injury Litigation

- A. The last lecture of the second day, entitled, "Self-Exposures: Tobacco and Smoking," focused on the advantages of suing tobacco companies for deaths and injuries caused by cigarette-ignited house fires, as compared to suits for cancer (no assumption of risk obstacle).
- B. This presentation was made by Stephen Teret, J.D., M.P.H., Program in Law and Public Health, Johns Hopkins University. (He is also a proponent of suing automobile manufacturers for failure to provide air bags and flashed slides of articles he has authored on the subject and newspaper accounts of plaintiff recoveries/settlements.)
- C. Mr. Teret presented statistics of deaths and injuries caused by cigarette-ignited fires vs. other fires, time-elapse slides of smoldering cigarettes igniting household furniture, graphs depicting cigarette construction and burn characteristics, and cigarette designs that are safer.
- D. Mr. Teret stated that he believed cigarette smoking causes cancer, that the tobacco companies should have to pay for putting addictive products on the market -- and that suits for fire deaths and injuries were an easier way to "mount an assault on the citadel of the tobacco industry."

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